



FILED

Jun 19 2008, 9:05 am

Kevin L. Smith

CLERK

of the supreme court,
court of appeals and
tax court

ATTORNEY FOR APPELLEE:

LINDSEY A. GROSSNICKLE

Bloom Gates Sigler & Whiteleather, LLP
Columbia City, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

Appellee-Petitioner.

))))))))))

No. 92A03-0711-CV-514

APPEAL FROM THE WHITLEY CIRCUIT COURT
The Honorable James R. Heuer, Judge
Cause No. 92C01-0602-DR-96

June 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Kent A. Campbell (“Husband”) appeals the trial court’s Final Decree dissolving his marriage to Deanne M. Campbell (“Wife”). Specifically, Husband contends that the court erred by awarding Wife one-half of his stock options with his current employer and one-half of a joint investment account funded with his \$5000 inheritance because neither of these things are marital assets according to the parties’ prenuptial agreement. Finding both of these things to be marital assets that the court properly divided between the parties, we affirm.

Facts and Procedural History

On February 28, 2002, and March 6, 2002, Husband and Wife entered into a Prenuptial Agreement (“the Agreement”). The Agreement provides that all assets owned separately by either party before the marriage shall continue to be owned as the separate property of that party after the marriage. Sections 1.2 and 1.3 of the Agreement also provide that all assets acquired by either party after the marriage—whether through gift, inheritance, or in any other way—shall be the separate property of the acquiring party and that all earnings or other income of any kind and from any source after the marriage shall be and remain the separate property of that party. However, Section 1.6 of the Agreement provides that “[n]othing in this Agreement shall prevent the parties from acquiring or holding property as joint (survivorship) or as tenants by the entireties property.” Appellant’s App. p. 12-13. Section 4 of the Agreement addresses Retirement Benefits and provides:

4.1 Ownership of Benefits. Each party agrees that benefits under any retirement or profit-sharing plan in which the other party is a

participant are the sole and separate property of that other party. Those benefits, all account balances, and additions thereto shall continue after the marriage to be the separate property of the participant and be subject to his or her beneficiary designation. Each party knows and understands the rights and benefits in such plans to which he or she would be entitled as the spouse of the participant, in the absence of any agreement, and hereby waives those rights and benefits to the full extent that those can be effectively waived under current and/or then applicable law.

4.2 Spousal Consent to Waiver. In implementation of 4.1 above, each party agrees that after the parties' marriage he or she will, at the proper time and from time to time and upon the request of the other party, execute a consent to and/or waiver of any joint and survivor annuity and/or preretirement survivor benefits in connection with the other party's retirement planning assets disclosed on Exhibit A or B hereto. That consent and/or waiver shall be in accordance with the requirements then existing under applicable law (e.g., Section 417 of the Federal Internal Revenue Code of 1986) to qualify as a full, sufficient, and valid consent and/or waiver. In the event a party fails or refuses for any reason to properly execute such a consent/waiver for any of the plans on the other party's said Exhibit A or B, the other party or his or her estate, or any affected designated beneficiary, may bring an action for specific performance, damages, and/or any other available legal remedy for that failure [or] refusal.

Id. at 15.

The parties married on March 9, 2002. At the time of their marriage, Husband worked at M & S Sheet Metal. On February 21, 2006, Husband filed a petition for dissolution of marriage. At the time, Husband worked at Steel Dynamics, Inc. ("SDI"). Wife then filed a motion for declaratory judgment requesting the trial court to determine the enforceability of the Agreement. A hearing was held, and on February 13, 2007, the trial court issued a declaratory judgment order, which provides in pertinent part:

12. During the marriage and after the execution of the agreement petitioner has obtained new employment [with SDI] and became eligible for retirement benefits with [SDI].

13. Section 4 of the agreement addresses retirement benefits. Section 4 specifically addresses retirement benefits disclosed on exhibit A or B of the

agreement. Section 4.1 provides, “Those benefits, all account balances, and additions thereto shall continue after the marriage to be separate property of the participant and be subject to his or her beneficiary designation.”

14. Further Section 4.2 requires a spouse to execute a consent to and/or waiver of any joint or survivor annuity and/or pre-retirement survivor benefits.

15. Petitioner never requested that respondent sign such a waiver.

16. *Petitioner’s retirement benefits with [SDI] are not included as assets covered by the prenuptial agreement.*

17. Subject to finding #11 [regarding maintenance, which is not at issue on appeal] and finding #16 the prenuptial agreement is enforceable in these proceedings[.]

Id. at 23 (emphasis added). Neither party appealed this order.

The final hearing was then held. According to Husband, “both parties agreed at the final hearing that the ‘retirement’ benefits would be considered a part of the marital estate, pursuant to the trial court’s Declaratory Order.” Appellant’s Br. p. 5 (record citations omitted). At issue at the final hearing, though, was whether Husband’s stock options at SDI were retirement benefits that were part of the marital estate or whether his stock options were separate property pursuant to the Agreement. Also at issue was whether Husband’s \$5000 inheritance, which was then deposited into a joint Ameriprise investment account,¹ was Husband’s separate property or marital property.

On September 12, 2007, the trial court issued its Final Decree. Specifically, the court found that the SDI stock options and Ameriprise investment account were marital property and equally divided them. Husband now appeals.

Discussion and Decision

Husband contends that the trial court erred in awarding Wife one-half of his stock options at SDI and one-half of the Ameriprise investment account funded with his \$5000

¹ There is more than one Ameriprise account involved in these dissolution proceedings. The Ameriprise account at issue ends in 6021.

inheritance. Specifically, he argues that, pursuant to the Agreement, he is entitled to all of his stock options at SDI and the entire Ameriprise investment account. When disposing of the marital property in this case, the trial court issued findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52(A). When a trial court issues such findings, we apply a two-tiered standard of review. *Granzow v. Granzow*, 855 N.E.2d 680, 683 (Ind. Ct. App. 2006). We first determine whether the record supports the findings and, second, whether the findings support the judgment. *Id.* The judgment will only be reversed when clearly erroneous, *i.e.*, when the judgment is unsupported by the findings of fact and the conclusions entered upon the findings. *Id.* Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. *Id.* To determine whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we will not reweigh the evidence or assess witness credibility. *Id.*

Antenuptial, or prenuptial, agreements are legal contracts by which parties entering into a marriage relationship attempt to settle the interest of each party in the property of the other during the course of the marriage and upon its termination by death or other means. *Boetsma v. Boetsma*, 768 N.E.2d 1016, 1020 (Ind. Ct. App. 2002) (citations omitted), *reh'g denied, trans. denied*. Antenuptial agreements are to be construed according to principles applicable to the construction of contracts generally. *Id.* The interpretation of a contract is primarily a question of law for the court and is reviewed *de novo*. *Id.*; see also *Steve Silveus Ins., Inc. v. Goshert*, 873 N.E.2d 165, 173

(Ind. Ct. App. 2007). If the language of the instrument is unambiguous, the intent of the parties must be determined from its four corners and the language is given its plain and ordinary meaning. *Boetsma*, 768 N.E.2d at 1020; *see also Magee v. Garry-Magee*, 833 N.E.2d 1083, 1087 (Ind. Ct. App. 2005).

I. Stock Options

Husband first contends that the trial court erred in awarding Wife one-half of his stock options at SDI. According to the record, SDI grants stock options to its employees twice a year, and these options have to vest for six months before the employee can exercise them. If, at the end of five years, the employee has not exercised the options, they expire. According to SDI's literature:

Stock options encourage employee ownership in the company, helping create shareholder value. Stock options can also motivate employees to work to make the company more successful, with the expectation that if the company is successful, over time its stock price will increase. If it does, employees' stock options will then become more valuable. Stock options provide a chance to make money *if* the company's stock increases in price . . .

Appellant's App. p. 63.

Husband argues that pursuant to Sections 1.2 or 1.3 of the Agreement—which provide that all assets acquired by a party after the marriage shall be the separate property of the acquiring party or that all earnings or other income after the marriage shall be and remain the separate property of that party—his stock options are separate property and not retirement benefits under Section 4 that are part of the marital estate. Wife, on the other hand, argues that the trial court properly found the stock options to be retirement benefits that are part of the marital estate.

Section 4 of the Agreement is entitled Retirement Benefits. Specifically, Section 4.1 provides, “Each party agrees that benefits under any *retirement or profit-sharing plan* in which the other party is a participant are the sole and separate property of that other party.” *Id.* at 15 (emphasis added). In its declaratory judgment order, the trial court acknowledged Section 4 but ruled that because there was no spousal consent to waiver, Husband’s retirement benefits (which also includes profit-sharing plans) at SDI were *not* covered by the Agreement and were therefore marital assets. Notably, Husband did not appeal this order. In fact, on appeal Husband concedes that “both parties agreed at the final hearing that the ‘retirement’ benefits would be considered a part of the marital estate, pursuant to the trial court’s Declaratory Order.” Appellant’s Br. p. 5 (record citations omitted). The question then becomes whether SDI’s stock options are a profit-sharing plan. “Profit-sharing” is “[a]n arrangement in which an employer shares some of its profits with its employees. The compensation can be stocks, bonds, or cash, and can be immediate or deferred until retirement.” InvestorWords.com, http://www.investorwords.com/3887/profit_sharing.html (last visited May 27, 2008). Based on the literature for SDI’s stock options and the basic definition of profit-sharing, it is apparent that SDI’s stock options are, in fact, a form of profit-sharing. Accordingly, Husband’s stock options with SDI fall under Section 4 of the Agreement. The trial court properly awarded Wife one-half of Husband’s stock options at SDI.

II. Joint Investment Account

Husband next contends that the trial court erred in awarding Wife one-half of the Ameriprise investment account, which was funded with his \$5000 inheritance. In support

of his argument, Husband points to Section 1.2 of the Agreement, which provides, “All assets acquired by either party after the marriage, whether through gift, *inheritance*, or in any other way, shall be the separate property of the acquiring party.” Appellant’s App. p. 12 (emphasis added). However, the evidence shows that the parties used Husband’s inheritance to open a joint Ameriprise investment account. Section 1.6 of the Agreement provides: “Nothing in this Agreement shall prevent the parties from acquiring or holding property as joint (survivorship),” and Section 2.2, which is entitled Survivorship Property, provides that each party “shall be entitled to one-half (1/2) of any property owned jointly (survivorship property) by the parties as contemplated in 1.6 herein.” *Id.* at 12, 14. Sections 1.6 and 2.2 control, and the trial court properly awarded Wife one-half of the joint Ameriprise investment account.

Affirmed.

MAY, J., and BAILEY, J., concur.